IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7798 OF 2004

The Administrator/Commissioner,
Municipal Corporation for the
City of Kalyan and Dombivli,
Having office at
Shankarrao Chowk, Kalyan,
Dist. Thane. ... Petitioner

Vs.

1. Shri. Amarsingh Babu Gaud,
Adult, Occupation Service,
R/o. Shankar Kohle Chawl,
New Colony, Kohoj Road,
Ambernath, Dist. Thane.

2. Ambernath Municipal Council,
Having its office at
Taluka Ambernath, Dist. Thane
421 501 through Chief Officer.

3. The Director of Municipal
Administration,
State Transport Building,
3rd Floor, Sir Pochkhanwala Road,
Police Camp, Worli,
Mumbai 400 018. ... Respondents

Mr. A.S. Rao for Petitioner.

Ms. Hotoxi Tavadia for Respondent No. 1.

Mr. R.M. Palne for Respondent No. 2.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : FEBRUARY 15, 2005

ORAL JUDGMENT (Per F.I. Rebello,J.) :

1. The Petitioner herein who is a Municipal Corporation for the City of Kalyan and Dombivali has sought amongst other reliefs for a direction to

direct Respondent No. 2 Ambernath Municipal Council to implement orders of the Labour Court, Thane dated 24.12.1993 in Complaint (ULP) No. 139 of 1991 and Order of Industrial Court, Thane dated 19.12.2000 reinstating the respondent No. 1 on the establishment of Petitioner.

. A few facts may be set out :

. On 1.10.1983 the State of Maharashtra constituted Kalyan Municipal Corporation by amalgamating various Municipal Councils including Ambernath Municipal Council as also some gram panchayats. Consequent thereto the employees working in the local bodies within the area of new Corporation became employees of the Kalyan Municipal Corporation.

. On 15.12.1989 Respondent No. 1 was issued memo suspending him with effect from 21.12.1989. A show cause notice was issued followed by chargesheet. After holding enquiry, Respondent No. 1 was dismissed from service. Respondent No. 1 preferred a complaint under the provisions of the M.R.T.U. & P..U.L.P. Act which was resisted by the Kalyan Municipal Corporation. On 24.12.1993 the complaint was allowed directing reinstatement

of Respondent No. 1 with full backwages and continuity of service. The revision preferred by the petitioner herein was dismissed.

2. During the pendency of the complaint before the Labour Court, a notification came to be issued dated 10.4.1992 deleting a part of the area of Kalyan Municipal Corporation and forming a separate Municipality known as Ambernath Municipal Council. On formation of the new council, various notifications came to be issued by the State Government. One such notification dated 14.8.1992 was issued in exercise of powers conferred by clause 7 of sub section (2) of Section 340 of the Maharashtra Municipalities Act, 1965 (hereinafter referred to as Act). By the said notification immediately before the specified date, if any proceedings where the Municipal Corporation of Kalyan is party to any legal proceedings pertaining to the matters relating to or affecting the newly constituted Ambernath Municipal Council, or its assets, rights and liabilities, the Ambernath Municipal Council shall be deemed to be substituted for the Municipal Corporation of city of Kalyan as party to the proceedings and proceeding may continue accordingly before the appropriate court or authority. By another notification of the same

date, in exercise of powers conferred by Clause 8 of Sub Section (2) of Section 340 of the Act, the Government directed that such employees as may be provisionally allotted by the Administrator of the Municipal Council of the city of Kalyan was from the specified date to be deemed to be temporarily transferred to the services of and become employees of the Ambernath Municipal Council on the same condition of service as were applicable to them immediately before specified date untill such conditions are duly varied by the said council or any other competent authority. Pursuant to the said notification the administrator of Kalyan Municipal Council issued notification dated 20.6.1992. By that notification, employees were given option to be employees either of the Kalyan Municipal Corporation or Ambernath Municipal Council. Further those who were serving or working in the area of either of Kalyan Municipal Corporation or Ambernath Municipal Council were allotted to the council in which their area fell or was included.

3. Respondent No. 1 had sought reinstatement with back wages. According to the Petitioner, Respondent No. 1 is an employee of Respondent No. 2, who has to implement the orders of the

Industrial Court or to take appropriate steps. Correspondence was exchanged between the Petitioner and Respondent No. 2. The Petitioners forwarded a copy of the relevant case papers to Respondent No. 2 and further stated that as respondent No. 1 was working in Ambernath division, when he had been suspended and terminated from service, and as such he ought to be reinstated in service by Respondent No. 2 Municipal Council. There was further exchange of correspondence.

. Respondent No. 2 then approached Respondent No. 3 contending that the entire matter was handled by the petitioner and Respondent No. 2 was not party to the proceedings in the court and sought necessary directions from Respondent No. 3. Respondent No. 3 in turn called for the report of the Collector,Thane. Respondent No. 3 by letter dated 22.3.2004 asked the petitioner to comply with the order of the Labour court and reinstate the Respondent No. 1 back in service as contained in the orders of the Labour Court. On 1.6.2004 Respondent No. 2 informed Petitioner that the matter had been referred by them to Respondent No. 3 and Respondent No. 3 had ordered that the Respondent No. 2 Municipal council has been constituted with effect from 14.4.1992 after

separation from Kalyan Municipal Corporation and as till then the Respondent No. 1 was in service of the Petitioner, the benefit of the orders of the Labour Court regarding back wages, the payment to respondent No. 1 should be given by the petitioner till that date i.e. 14.4.1992. The Petitioner in turn informed Respondent No. 3 that considering the order of Government of Maharashtra dated 14.4.1992, the municipal Council Ambernath is deemed to be party to the proceedings and therefore, liability to comply is of respondent No.

2.

4. The Petitioner aggrieved by the said direction have preferred the present petition. It is submitted on behalf of the Petitioner that considering the order of allotment and as at that time Respondent No. 1 was working in the area now falling within the area of Respondent No. 2, the order has to be complied with by Respondent No. 2.

. On the other hand on behalf of the Respondent No. 2 their learned counsel submits that Respondent No. 2 was not party to the proceedings before the Labour Court and consequently the order of the Labour Court would not be binding upon it but on the petitioner. It is further submitted

that it is the Petitioner who had preferred revision application and considering that it will be the Petitioner who has to reinstate Respondent No. 1.

5. We have heard learned counsel for the parties. Section 340 of the Act is a power conferred on the State Government to make suitable provisions if the Municipal area is created or altered. It is pursuant to these powers, that the State Government issued various notifications in the exercise of that power. We may only advert as we have adverted to earlier to the notifications issued under Clause 3 of Sub Section (2) of Section 340. By virtue of the said notification of 14.4.1992, by operation of law wherever the petitioner is party to any legal proceedings, pertaining to matter relating to or affecting the newly constituted Ambernath Municipal Council or its assets, rights or liabilities, Respondent No. 2 Ambernath Municipal Council was deemed to be substituted for the petitioner as party to these proceedings and the proceedings were to continue accordingly before the appropriate court or authority. In other words, by operation of law even though Respondent No. 2 may not have been the party, by notification of 14.4.1992 Respondent No. 2 was made party and as such the

proceedings though initially in the name of the petitioner as respondent, would be proceedings against Respondent No. 2. The contention advanced on behalf of the Respondent No. 2 that no notice was given to them, to my mind would have no effect considering notification of 14.4.1992. Whether Petitioners gave notice to Respondent No. 2 of the proceedings is immaterial in so far as the present issue is concerned. The order of the Labour Court or for that matter of the Revisional Court is not the subject matter of any challenge, as neither Petitioner nor Respondent No. 2 have thereafter challenged the order of the Revisional Court. In fact the Revisional Court was pleased to dismiss the revision on 19.12.2000. By operation of law, Respondent No. 2 had become party to the proceedings.

. We then have the other notification of 14.4.1992 made in exercise of powers conferred by Clause 8 of sub section (2) of Section 340. By this notification, the Administrator of the Petitioner had been conferred power to allot employees to newly formed municipal council of Ambernath. In exercise of that power, the Administrator issued notification dated 20.6.1992. By that notification the administrator was pleased to allot the staff

based on the option given by them between Petitioner and Respondent No. 2 and by the very same notification also ordered that the other staff working in respective areas falling within the Municipal limits of either Petitioner or Respondent No. 2 would be employees of the Petitioner or Respondent No. 2 respectively. In the instant case, there is no dispute and the documentary evidence has now also been produced to show that Respondent No. 1 at the time of suspension and dismissal was working within the area of Respondent No. 2. The Respondent No. 1 had initially also being recruited by Respondent No. 2. Once that be the case, in terms of the notification dated 14.4.1992, read with notification dated 20.6.1992, the Respondent No. 1 would be employee of Respondent No. 2. It is true that on the date of notification, Respondent No. 1 was not in the employment either of Petitioner or Respondent No. 2 as he had been dismissed and complaint was pending. However, consequent to order of reinstatement, Respondent No. 1 would be deemed to be reinstated to the post from which he had been dismissed. In the instant case, therefore, Respondent No. 1 will have to be reinstated in the post falling within the area of Respondent No. 2 as he was holding the post there.

. A similar view has also been taken by another Division Bench of this Court in Writ Petition No. 5807 of 1998 in the case of Hanumant Jabanna Chalwadi and others Vs. Kalyan Dombivli Municipal Corporation and others decided on 23rd March, 1999. In those cases also some employees at the time of reconstitution of the Petitioner there had been prosecuted and convicted. They subsequently came to be acquitted. The issue before the learned Division Bench of this Court was as to where on acquittal the petitioners before it should be reinstated. On the consideration of the provisions of the Notification, the learned Division Bench of this court held that they would be liable to be reinstated by the Ambernath Municipal Council, where they were working at the time of the dismissal.

6. In the instant case, therefore, considering that Respondent No. 1 was posted or last worked in the area now constituted Respondent No. 2, it is for Respondent No. 2 to reinstate the Respondent No. 1. The Respondent No. 2 is directed to reinstate Respondent No. 1 within four weeks from today in terms of the order of the Labour Court. If the Respondent No. 1 cannot be reinstated on

account of superannuation, then Respondent No. 1, be paid all benefits in terms of the order of the Labour Court and consequently also all terminal benefits.

. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)